Supreme Court, U.S.
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In The

Supreme Court of the United States

OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC., ET AL.,

Petitioners,

v.

MAYFLOWER TRANSIT, LLC,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Federal "Truth-in-Leasing" regulations require that leases between motor carriers and drivers contain a plain statement describing compensation and forbid the forced purchase of products, equipment or services. The Court of Appeals declined to enforce the forced purchase regulation reasoning that it made no economic difference if the lease provided for a lower rate of compensation with no forced purchase or a higher rate of compensation with a forced purchase. Did the Court of Appeals err by substituting its economic policy preferences for those embodied in a duly promulgated regulation?

2. The Court of Appeals, in its zeal to promote its own economic policy preferences, premised its decision on assumed facts contradicted by the record and a hypothetical lease not found in the record. Did the Court of Appeals depart from the accepted and usual course of judicial proceedings so as to warrant this Court's exercise of its supervisory power?

LIST OF PARTIES TO THE PROCEEDING BELOW

Petitioners:

Owner-Operator Independent Drivers Association, Inc., Anne Weber-Neidig, William H. Owen, and Timothy Corwin, Sr.

Respondent:

Mayflower Transit, LLC.

Petitioner Owner-Operator Independent Drivers Association, Inc. does not have a parent corporation or a non-wholly owned subsidiary that would be required to be listed pursuant to Supreme Court Rule 29.6.

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit (App. 1-9), affirming the decision of the district court relative to the issues in this writ is reported at 615 F. 3d 790. The unreported decision of the district court (App. 10-18), may be found at 2005 WL 4702006.

JURISDICTION

The Federal Courts have subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1337. The causes of action alleged in the Amended Complaint arise under 49 U.S.C. §§ 14102, 14704(a)(1)-(2), and 49 C.F.R. Part 376.

The United States Court of Appeals for the Seventh Circuit issued an opinion dated August 9, 2010, affirming the judgment of the district court. Petitioners filed a timely motion for rehearing *en banc*. The Seventh Circuit denied Petitioners' petition for rehearing *en banc* in an Order dated October 13, 2010. App. 19.

STATUTORY PROVISIONS INVOLVED

The action before the district court was brought pursuant to 49 U.S.C. § 14704(a)(2).

STATEMENT OF THE CASE

Defendant/Respondent Mayflower is a federally regulated motor carrier that hauls household goods in interstate commerce. Plaintiffs/Petitioners are owner-operator drivers of trucks leased by Mayflower to haul household goods in interstate commerce.

Leases between motor carriers and owner-operators are governed by the federal Truth-in-Leasing regulations. 49 C.F.R. Part 376. These regulations were originally promulgated by the Interstate Commerce Commission. Following the sunset of the ICC, enforcement responsibility was transferred to the U.S. Department of Transportation, Federal Motor Carrier Safety Administration.[1] Violations of the Truth-in-Leasing regulations are privately actionable under 49 U.S.C. § 14704(a)(1)-(2).[2] *Rivas v. Rail Delivery Services, Inc.*, 423 F. 3d 1079, 1082 (9th

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[1] Interstate Commerce Commission Termination Act, Pub. L. No. 104-88, 109 Stat. 803 (1995) (codified in sections of Title 49). The Act abolished the ICC effective January 1, 1996.

[2] 49 U.S.C. § 14704(a)(1) provides: "A person injured because a carrier or broker providing transportation or service subject to jurisdiction under Chapter 135 does not obey an order of the Secretary or the Board, as applicable, under this part, except an order for the payment of money, may bring a civil action to enforce that order under this subsection. A person may bring a civil action for injunctive relief for violations of sections 14102 and 14103." 49 U.S.C. § 14704(a)(2) provides: "A carrier or broker providing transportation or service subject to jurisdiction under chapter 135 is liable for damages sustained by a person as a result of an act or omission of that carrier or broker in violation of this part."

Cir. 2005); *Owner-Operator Indep. Drivers Ass'n v. New Prime Inc.*, 192 F. 3d 778, 784-85 (8th Cir. 1999).

Here, owner-operator Petitioners brought suit seeking declaratory and injunctive relief, as well as damages, from Respondent Mayflower for its alleged violation of these regulations. Petitioners alleged that Mayflower violated the regulations by forcing Petitioners to purchase, as a condition for entering into regulated lease agreements, public liability and property damage ("PL/PD") insurance that Mayflower was required to obtain and maintain itself under federal motor carrier regulations.

The district court erroneously granted summary judgment against Petitioners on their public liability insurance claims, holding that the regulations do not preclude Mayflower from shifting to Petitioners its responsibility for obtaining and paying for such insurance. *Owner-Operator Indep. Drivers Assoc., Inc. v. Mayflower Transit, Inc.*, 2005 WL 4702006 (S.D. Ind. Sept. 26, 2005). App. 10-18.

Petitioners timely appealed to the U.S. Court of Appeals for the Seventh Circuit. The Seventh Circuit, in an opinion entered on August 9, 2010, affirmed the district court's holding that Mayflower did not violate 49 C.F.R. § 376.12(i). *Owner-Operator Indep. Drivers Assoc., Inc. v. Mayflower Transit, LLP*, 615 F. 3d 790 (7th Cir. 2010) (Easterbrook, C.J.). App. 1-9.

REASONS FOR GRANTING THE WRIT

I. The Court of Appeals Improperly Substituted Its Economic Policy Preferences For That of the Agency

The Court of Appeals overstepped its bounds by ignoring the regulation and substituting the Court's economic policy preferences for those of the agency. In so doing, the Court of Appeals' departure from the accepted and usual course of judicial proceedings is so extraordinary and far reaching that this Court should exercise its supervisory power.

The regulations at issue here, 49 C.F.R. §§ 376.12(h) and (i), limit the circumstances under which a motor carrier may make deductions from an owner-operator's stated compensation. Section 376.12(i), states that the lease between the motor carrier and the owner-operator "shall specify that the lessor is not required to purchase or rent any products, equipment or services from the authorized carrier as a condition of entering into the lease arrangement." Here, the question before the Court of Appeals was whether a lease requiring Petitioners to purchase PL/PD insurance coverage from Mayflower is a forced purchase in violation of § 376.12(i).

Using a hypothetical example not based on the record, the Court of Appeals absolved Mayflower from liability because it found no economic difference between reducing a fixed compensation rate of $1.10 per mile by $.10 to cover insurance, and negotiating a fixed compensation rate of $1.00 without reference to

insurance. App. 6-7. Instead of applying the plain language of the regulations to the lease agreements in the record, the Seventh Circuit reasoned:

> Let us turn, then, to the question whether the chargeback violates § 376.12(i). Plaintiffs say that it does, because to pay for something is the same thing as to purchase something. But that can't be right. Suppose that Mayflower were to cover the cost of insurance by reducing the amount it offers per mile of transportation. "We will pay you $1.10 per mile and charge back 10 cents per mile for insurance" *is identical to* "we will pay you $1.00 per mile and not charge you anything for insurance." No one would say that the latter violates § 376.12(i); it is not a "sale" of insurance any more than the statement "we will pay you $1.00 per mile and not charge you anything to cover the expense of renting our buildings and paying the telephone workers who took the shippers' orders" would amount to "selling" the owner-operators the labor of the telephone workers, of a slice of Mayflower's business premises. App. 6-7. (Emphasis added).

The problem with this reasoning is that when it promulgated the regulation the Interstate Commerce Commission determined that there is a difference between negotiating a fixed rate of compensation and reducing that fixed rate through forced deductions for charge-back items like insurance and negotiating a lower rate of compensation with no deduction for insurance. The ICC's policy choice allows a driver to

negotiate a fixed rate of compensation with the economic freedom to purchase charge-back items like insurance elsewhere at a more favorable price than that offered by the carrier. The Court of Appeals ignored the ICC's determination that motor carriers should not be given unlimited freedom to reduce a driver's agreed rate of compensation through improper charge-backs (§ 376.12(h)) or forced purchases of products or services (§ 376.12(i)). The ICC's policy choice was made without reference to the economic theory favored by the Court of Appeals. The issue here is not whether the Court of Appeals employed a wiser policy preference than that favored by the ICC. The issue is whether the Court of Appeals may substitute its policy preferences for that of the agency. It may not.

The record before the Court of Appeals contained three specific lease agreements between Petitioners and Mayflower or Mayflower's agent. (*See* section II, *infra*). In each lease, the owner-operator's compensation was fixed, based either on a percentage of line-haul revenue, or on a flat per mile rate. After establishing a fixed rate of compensation, the leases contained provisions reducing the driver's compensation. Each of the three agreements violated the "forced purchase" prohibition of § 376.12(i) by requiring the lessors to *purchase* insurance services from Mayflower as a condition of entering into the lease arrangement. (*See* section II, *infra*).

The regulatory history of the provision reveals that the ICC intended the forced purchase prohibition

to be "all inclusive" and specifically included the forced purchase of insurance:

> *Discussion and conclusions.* – The proposed rule is designed to insure that the lessor will not be obligated to purchase or rent products or services from the authorized carrier as a condition to entering into a lease arrangement. This section is intended to be *all inclusive* and affects other items as well; *e.g.*, washing of equipment, repair services, *insurance*, and so on.
>
> * * *
>
> It also addresses the concern of owner-operators about excess profits from the sale or rental of products which are tied to leasing arrangements. *Lessors will be free to* purchase fuel, rent trailers, *obtain insurance*, and so on, *from whatever source they so choose.*[3]

The regulatory history is clear. The prohibition on forced purchases was in response to owner-operator concerns about motor carriers making deductions from their compensation, and the rule was intended to cover a wide range of products and services, including insurance. The ICC regulations were designed to address the problem of the overwhelming market power possessed by motor carriers and the

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[3] *Lease and Interchange of Vehicles*, 129 M.C.C. 700, 729-30 (1978) (emphasis added). App. 20-22.

correspondingly weak negotiating position of owner-operators.

The Court of Appeals should have given "substantial deference" to the ICC's interpretation of its own regulations. *See Thomas Jefferson Univ. v. Shalala*, 512 U.S. 504, 512 (1994) ("We must give substantial deference to an agency's interpretation of its own regulations"); *Martin v. Occupational Safety and Health Review Comm'n*, 499 U.S. 144, 150-151 (1991); *Lyng v. Payne*, 476 U.S. 926, 939 (1986); *Udall v. Tallman*, 380 U.S. 1, 16 (1965). As this Court held in *Udall*, the role of the federal courts is not to decide which among several competing interpretations best serves the regulatory purpose. Rather, the agency's interpretation must be given "controlling weight unless it is plainly erroneous or inconsistent with the regulation." *Udall*, 380 U.S. at 16, (quoting *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410, 414 (1945)). This broad deference is all the more warranted when, as in this case, the regulation concerns "a complex and highly technical regulatory program," in which the identification and classification of relevant "criteria necessarily require significant expertise and entail the exercise of judgment grounded in policy concerns." *Pauley v. BethEnergy Mines, Inc.*, 501 U.S. 680, 697 (1991).

Mayflower and its owner-operators agreed to a compensation arrangement based upon a division of freight revenues. Mayflower was required to pay its cost of doing business out of its share of the freight revenue. The ICC understood that a generous

compensation clause was an important factor in attracting drivers to work for motor carriers. Under the regulatory scheme, if Mayflower wanted to shift costs to its drivers after compensation was agreed to, it was required to follow the chargeback and forced purchase rules.

The Court of Appeals ignored that the ICC intended to change the market balance to afford some protection to drivers. That a Court may disagree with the ICC's remedy for market imbalance is not a sufficient reason for the Court to decline to enforce that remedy. In *Arkansas v. Oklahoma*, 503 U.S. 91, 113 (1992), this Court found that the court of appeals erred in overturning EPA promulgated regulations, noting that "the Court of Appeals made a policy choice that it was not authorized to make." *Id.* The Court held that "[i]t is not our role, or that of the Court of Appeals, to decide which policy choice is the better one, for it is clear that Congress has entrusted such decisions to the Environmental Protection Agency." *Id.*

Finally, this case is strikingly similar to the facts before this Court in *E.I. du Pont de Nemours & Co. v. S.E.C.*, 432 U.S. 46 (1977). In that case, the court of appeals set aside the S.E.C's approval of a merger on the ground that the Commission's reliance on "net asset value" was unjustified. The court of appeals, over the objection of the parties, "undertook the unique appellate procedure of employing a university professor to assist the court in understanding the record and prepare reports and memoranda for the

court." *Id.* at 56. As a result, the reports relied on by the court contained "data and economic observations which had not been examined and tested by the traditional methods of the adversary process." *Id.*

This Court reversed, reasoning that in rejecting the conclusion of the Commission, "the Court of Appeals substituted its own judgment for that of the agency charged by Congress with that responsibility." *Id.* The Court concluded that "the Court of Appeals clearly departed from its statutory appellate function and applied an erroneous standard in its review of the decision of the Commission." *Id.* In this case, the Court of Appeals employed its own economic analysis, based on assumptions neither in the record nor argued by the parties. As such, it departed from its statutory appellate function by substituting its own economic policy preferences for that of the ICC.

II. The Court of Appeals Erred By Ignoring The Record Before It And Conducting Its Favored Economic Analysis Using Assumptions And Hypothetical Lease Agreements Not Found In The Record.

Petitioners alleged that Mayflower violated the "forced purchase" prohibition contained in 49 C.F.R. § 376.12(i) by requiring its owner-operators to purchase PL/PD insurance from Mayflower as a condition of entering into a lease arrangement.

The Seventh Circuit rejected Petitioners' argument on the ground that Mayflower did not "sell"

insurance to Petitioners. App. 6-7. According to the Court of Appeals:

> [Mayflower] is not an insurer. It is not authorized to underwrite risks. The regulations require motor carriers to purchase insurance underwritten by *real* insurers, so that persons injured by a motor carrier's operations may find a source of compensation more reliable than the motor carrier itself, which often is thinly capitalized.

App. 7 (emphasis in original). Notably, the Court of Appeals did not cite to any portion of the record to support its conclusion that Mayflower was not an insurer and did not underwrite risks.

The record directly contradicts the Court of Appeals' findings. In fact, shortly after its acquisition by UniGroup in April 1995, Mayflower acquired insurance policies from Vanliner Insurance Company, a wholly owned subsidiary of its parent company UniGroup.[4] In 1995, Vanliner provided insurance coverage for over 80 percent of United Van Lines' agents and more than 100 Mayflower affiliates.[5] UniGroup's acquisition of Mayflower caused Vanliner's net income to rise substantially, as Mayflower acquired insurance policies from Vanliner to cover itself and its agents when goods were transported

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[4] *See UniGroup, Inc.: 1995 Annual Report*, App. 33.

[5] App. 33.

under Mayflower's or its agent's federal operating authority.[6]

Thus, the record demonstrated that Mayflower acted as an insurer and *sold* insurance to Petitioners by arranging coverage through Vanliner, an affiliated captive insurance company. The Court of Appeals failed to analyze this evidence and based its conclusions on assumptions and conjecture completely untethered to the record.

At the same time, the record before the district court and the Court of Appeals contained three lease agreements.[7] In each lease, the owner-operator's compensation was fixed, based either on a percentage of line-haul revenue,[8] or on a flat per mile basis.[9] After establishing a fixed rate of compensation, the leases contained provisions reducing the driver's compensation. Each of the three agreements violated

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[6] App. 34.

[7] The first contract was between Petitioner Neidig and Mayflower's agent Gazda Transportation System. "Contract Hauling Agreement," App. 23-25. The second contract was a lease between Mayflower itself and its owner-operator truckers. "Independent Contractor Agreement," App. 26-30. The last agreement was a contract between OOIDA member Richard Wheatley and Mayflower agent Whittier Transfer & Storage on March 5, 1998. "Fleet Lease Agreement," App. 31-32.

[8] Neidig Lease, App. 25. Neidig received 48-58% of line-haul transportation charge.

[9] Wheatly - Whittier Lease, App. 31. Owner-operator paid $1.00 per mile for dispatch miles. Mayflower contract truckman lease, App. 29 (per mile rate).

the "forced purchase" prohibition of § 376.12(i) by requiring the lessors to *purchase* insurance services from Mayflower as a condition of entering into the lease arrangement. The first two agreements stated that "[t]he Company *shall charge* Contractor, as specified in Schedule B attached hereto, for providing bodily injury and property damage . . . insurance coverage while the equipment is in the service of the company."[10] The "charge" is identified as "2.5% of linehaul" in the first lease and "$305 per month" in the second lease.[11] The remaining lease stated that "[t]he P.L. & P.D. insurance deduction taken by Mayflower Transit on all interstate shipments will be *charged* directly to the Independent Contractor."[12]

The Seventh Circuit should have applied the plain language of the federal regulations to the three lease agreements in the record. Instead, the Court of Appeals in its zeal to promote its own economic theory, ignored each of the leases in the record and analyzed a hypothetical leasing arrangement that was completely unrelated to the record. Even if a court of appeals were to be given some leeway to substitute economic analysis for legal principles, it should at least do so on the basis of the real record before it, not one contrived to support its economic theories.

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[10] App. 24, 27 (emphasis added).

[11] App. 25, 30.

[12] App. 32 (emphasis added).

This Court recently held that it has "a significant interest in supervising the administration of the judicial system" and that "the Court will consider whether the courts below have 'so far departed from the accepted and usual course of judicial proceedings . . . as to call for an exercise of this Court's supervisory power.'" *Hollingsworth v. Perry*, 130 S. Ct. 705, 713 (2010), citing S. Ct. Rule 10(a).

In this case, the Seventh Circuit premised its decision on invented facts that were directly contradicted by the record and by analyzing a hypothetical lease in lieu of the lease agreements in the record. By so doing, the Court of Appeals violated the federal judiciary's most basic rule; namely, that the courts are to decide cases in controversy based on the record before the court. This Court should exercise its supervisory power and remedy this fundamental error.

CONCLUSION

For the foregoing reasons, this case is appropriate for review under Rule 10(a) of the Rules of this Court, and the petition for writ of certiorari should be granted.

Respectfully submitted,

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January 2011

615 F.3d 790

United States Court of Appeals,
Seventh Circuit.

OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC., et al., Plaintiffs-Appellants,

v.

MAYFLOWER TRANSIT, LLC, Defendant-Appellee.

No. 08-1673.

Argued Sept. 18, 2009.
Decided Aug. 9, 2010.

David J. Carr, Attorney, Ice Miller, Indianapolis, IN, David A. Cohen, argued, Cullen Law Firm, Washington, DC, for Plaintiffs-Appellants.

Michael J. Morris, argued, W. David Wells, Thompson Coburn LLP, for Defendant-Appellee.

Before EASTERBROOK, Chief Judge, and WILLIAMS and TINDER, Circuit Judges.

EASTERBROOK, Chief Judge.

Federal regulations require motor carriers to have insurance for the protection of the public, which may be injured by collisions on the highway. 49 U.S.C. § 13906; 49 C.F.R. § 376.12(j)(1). Carriers may provide service through leased equipment – and a leased truck frequently is owned by its driver, who comes with the lease. *See Transamerican Freight Lines, Inc. v. Brada Miller Freight Systems, Inc.*, 423 U.S. 28, 96 S.Ct. 229, 46 L.Ed.2d 169 (1975). The required insurance must cover any leased gear and its driver.

Mayflower Transit, which transports household goods for people who move to new homes, pays the owner-operator of a leased truck a negotiated price per mile (or per ton-mile), plus fees for other services such as packaging and loading the shipper's goods. Mayflower reduces these payments by the cost of insurance. The process is called a chargeback. Some of the lessors, and an association that represents them, contend in this suit under 49 U.S.C. § 14704(a)(2) that a chargeback violates 49 C.F.R. § 376.12(*i*), which provides that "the lessor is not required to purchase or rent any products, equipment, or services from the authorized carrier as a condition of entering into the lease arrangement." As the owner-operators see things, a requirement to reimburse Mayflower for the expense of insurance is the same thing as a purchase of insurance from Mayflower.

The district court dismissed some of the owner-operators' claims for relief after concluding that the statute of limitations is two years. Neither § 14704(a)(2) nor any other statute sets a period of limitations for suits on its authority. The owner-operators contended that the residual statute of limitations, 28 U.S.C. § 1658(a), thus prescribes a four-year period. (Section 14704 was enacted in 1995 and therefore is potentially covered by § 1658, which applies to federal statutes enacted or amended after December 1, 1990. *See Jones v. R.R. Donnelley & Sons Co.*, 541 U.S. 369, 124 S.Ct. 1836, 158 L.Ed.2d 645 (2004).) But the district court concluded that the

two-year period that § 14705(c) specifies for administrative complaints under § 14704(b) also applies to suits under § 14704(a)(2). The district judge separately concluded that a chargeback differs from a compulsory purchase of insurance, so the owner-operators lost on the merits.

We start with the statute of limitations, which affects not only the chargeback question but also any other claims within the scope of § 14704(a)(2). Plaintiffs' suit included many subjects, and although most are not pertinent to this appeal (the parties accept the district judge's disposition of them), the relief on some may depend on the length of the limitations period – as the relief on the chargeback issue certainly does, should we rule in the owner-operators' favor. An appeal from a final decision brings up earlier interlocutory decisions, such as the ruling about limitations. And the appeal *is* from a final decision – at least, from a decision that was made final after oral argument. Mayflower dismissed some counterclaims without prejudice, planning to reinstate them after the appeal. That made the decision non-final. *See Horwitz v. Alloy Automotive Co.*, 957 F.2d 1431 (7th Cir.1992); *JTC Petroleum Co. v. Piasa Motor Fuels, Inc.*, 190 F.3d 775, 776-77 (7th Cir.1999). But after the problem was pointed out at oral argument, the parties filed a stipulation resolving the counterclaims with prejudice. That made the decision final, and as in other recent appeals we give effect to this belated disposition. *See National Inspection & Repairs, Inc. v. George S. May International Co.*, 600 F.3d 878, 883-84 (7th Cir.2010).

Section 14704(b) allows shippers to recover damages when a carrier charges more than the rate specified in its tariff. Section 14705(c) reads: "A person must file a complaint with the Board or Secretary, as applicable, to recover damages under section 14704(b) within 2 years after the claim accrues." This limit on shippers' time to launch an administrative proceeding to recover an overcharge defined by a tariff is unrelated to § 14704(a)(2), which allows carriers to enforce legal rights established by the statute or regulation. But the district judge thought that the failure of § 14705(c) to mention § 14704(a)(2) was a scrivener's error. The judge concluded that Congress had changed the numbering of § 14704's subsections and failed to adjust § 14705 to match, leaving § 14705(b) pointing to the wrong part of § 14704. That could be corrected, the judge held, by reading the reference to § 14704(b) as if it were a reference to § 14704(a)(2).

The problem with this approach is that Congress enacted, and the President signed, a statute that places a two-year period of limitations on administrative complaints under § 14704(b), while leaving suits under § 14704(a)(2) to the four-year residual statute of limitations. A judge's belief that Congress planned to do something different but bollixed the job does not alter what the enacted statute provides. The Constitution gives the force of law only to what is actually passed by both houses of Congress and signed by the President. What Congress meant to do, but didn't, is not the law. So when a statute's language conflicts with its legislative history – a fair description of the

events that led to § 14704 and § 14705 – it is the enacted text rather than the unenacted legislative history that prevails. *Exxon Mobil Corp. v. Allapattah Services, Inc.*, 545 U.S. 546, 568-71, 125 S.Ct. 2611, 162 L.Ed.2d 502 (2005); *In re Sinclair*, 870 F.2d 1340 (7th Cir.1989).

Courts sometimes take liberties with texts that seem to be garbled or absurd, on the theory that when there is a choice between sense and nonsense both the legislature and the President prefer sense. But there is nothing absurd about § 14705(b) as written. It points to a statute that could do with a period of limitations. Whether a four-year period applies to § 14704(a)(2) and a two-year period to § 14704(b), or the reverse, neither outcome is absurd.

Several opinions that post-date the district court's resolution of the limitations issue hold that only a linguistic glitch permits invocation of the anti-absurdity canon. *See, e.g., Spivey v. Vertrue, Inc.*, 528 F.3d 982 (7th Cir.2008); *United States v. Logan*, 453 F.3d 804 (7th Cir.2006), affirmed, 552 U.S. 23, 128 S.Ct. 475, 169 L.Ed.2d 432 (2007). Allowing the "correction" of substantive problems would make too much inroad on the legislative power, because judges tend to see as "absurd" propositions with which they disagree. And in *United States v. Head*, 552 F.3d 640 (7th Cir.2009), we held that a legislative blunder in adjusting cross-references when amending a statute does not justify invoking the doctrine of scrivener's error, unless the text as enacted is hash. The principle behind *Head* applies equally to § 14705(b), whose

cross-reference makes sense. Legislative history – what would in contract interpretation be called extrinsic ambiguity – does not justify revising a text that has no intrinsic ambiguity or any difficulty in application.

Two other courts of appeals have addressed this subject. *Owner-Operator Independent Drivers Association v. United Van Lines, LLC,* 556 F.3d 690, 692-96 (8th Cir.2009); *Owner-Operator Independent Drivers Association, Inc. v. Landstar System, Inc.,* 541 F.3d 1278, 1297 (11th Cir.2008). Both have held that § 14705(b) must be enforced as written, and that the period of limitations for suits under § 14704(a)(2) therefore is four years. We agree with those decisions. (*United Van Lines* discusses the incongruous fact that claims under § 14704(b) appear to be subject to two different statutes of limitations, one from § 14705(b) and another from § 14705(c). We have nothing to add to its discussion. No matter what one makes of the oddity, it does not imply anything about how long people have to sue under § 14704(a)(2).)

Let us turn, then, to the question whether the chargeback violates § 376.12(*i*). Plaintiffs say that it does, because to pay for something is the same thing as to purchase something. But that can't be right. Suppose that Mayflower were to cover the cost of insurance by reducing the amount it offers per mile of transportation. "We will pay you $1.10 per mile and charge back 10¢ per mile for insurance" is identical to "we will pay you $1.00 per mile and not charge you anything for insurance." No one would say that the

latter violates § 376.12(*i*); it is not a "sale" of insurance any more than the statement "we will pay you $1.00 per mile and not charge you anything to cover the expense of renting our buildings and paying the telephone workers who took the shippers' orders" would amount to "selling" the owner-operators the labor of the telephone workers, or a slice of Mayflower's business premises. Cf. *Krzalic v. Republic Title Co.*, 314 F.3d 875 (7th Cir.2002) (charging for title-transfer services does not violate a rule against separate sales or kickbacks in real estate closings).

Plaintiffs treat the chargeback as a sale of insurance *by* Mayflower. Yet it is not an insurer. It is not authorized to underwrite risks. The regulation requires motor carriers to purchase insurance underwritten by *real* insurers, so that persons injured by a motor carrier's operations may find a source of compensation more reliable than the motor carrier itself, which often is thinly capitalized. Mayflower is a large and solvent firm that has been in business for decades; it can pay for its own casualties (and will do so indirectly because its insurer will set an experience-rated premium that covers the costs of indemnity, plus a loading charge for the insurer's administrative overhead). But many other motor carriers are small, and some would take too few precautions against accidents if they anticipated that a major loss would lead them to declare bankruptcy. Then the owners would reap profits as they came in, and use the corporate shield of limited investors' liability to protect themselves against tort judgments. The insurance

requirement prevents that. And the regulation places on the motor carrier under whose certificate the service is rendered the obligation to secure insurance; that makes enforcement much easier than placing a separate mandatory-insurance obligation on the many owner-operators who own and lease a single truck. Yet nothing in this rationale for mandatory insurance implies that lessors need not *pay* for the coverage secured through the motor carrier; as we've observed already, they will pay indirectly (through lower rates per mile) if they do not pay through a chargeback.

If this were not clear from the text of § 376.12(*i*) and the fact that Mayflower is not an insurer (so it can't be selling insurance to the lessors), it is made clear by comparing § 376.12(*i*) with § 376.12(j)(1), which speaks to the topic. This subsection, captioned "Insurance", reads:

> The lease shall clearly specify the legal obligation of the authorized carrier to maintain insurance coverage for the protection of the public pursuant to FMCSA regulations under 49 U.S.C. 13906. The lease shall further specify who is responsible for providing any other insurance coverage for the operation of the leased equipment, such as bobtail insurance. If the authorized carrier will make a charge back to the lessor for any of this insurance, the lease shall specify the amount which will be charged-back to the lessor.

The reference to chargebacks in the third sentence is incompatible with the owner-operators'

contention that chargebacks are "sales" forbidden by § 376.12(*i*). Courts do not read regulations to create such a glaring, and unnecessary, inconsistency.

Plaintiffs want us to read the third sentence, which speaks of chargebacks, as limited to the second, which deals with "other insurance coverage . . . such as bobtail insurance." But the third sentence refers to "any" of "this" insurance, and that construction is best understood as including the insurance mentioned in the whole subsection. It would have been easy to write: "If the authorized carrier will make a charge back to the lessor for any of [the other] insurance [mentioned in the previous sentence], the lease shall specify the amount which will be charged-back to the lessor." But that's not what the third sentence says. Section 376.12(j)(1) confirms our understanding of § 376.12(*i*): A chargeback for the cost of insurance is not a sale of insurance. The eighth circuit reached the same conclusion in *United Van Lines,* 556 F.3d at 696-97. No court of appeals has held otherwise.

The judgment with respect to chargebacks is affirmed, and the case is remanded for any further proceedings that may be required by our ruling on the limitations issue.

2005 WL 4702006 (S.D.Ind.)

United States District Court,
S.D. Indiana, Indianapolis Division.
OWNER-OPERATORS INDEPENDENT DRIVERS ASSOCIATION, INC., et. al., Plaintiffs,
v.
MAYFLOWER TRANSIT, INC., Defendant.
No. IP 98-458-C B/S.

Sept. 26, 2005.

David Aaron Cohen, Joseph Albert Black, Paul Damien Cullen, Sr., The Cullen Law Firm PLLC, Washington, DC, David J. Carr, Margaret Dewey Wielenberg, Ice Miller LLP, Indianapolis, IN, for Plaintiffs.

David Wells, Michael J. Morris, Rebecca A. Pinto, Roman P. Wuller, Thompson Coburn LLP, St. Louis, MO, James Albert Calderwood, Zuckert Scoutt & Rasenberger, Washington, DC, David C. Campbell, James M. Hinshaw, Martha S. Hollingsworth, Bingham McHale, LLP, Indianapolis, IN, for Defendant.

ENTRY REGARDING MOTION FOR PARTIAL SUMMARY JUDGMENT

BARKER, J.

This case is before the Court on Plaintiffs' Motion for Partial Summary Judgment on the Issue of Liability. The motion is fully briefed, and the Court, being duly advised, DENIES the motion for the reasons set forth below.

ISSUES PRESENTED

The Court has had several opportunities to summarize the background facts and allegations in this case, and will not do so again here. At issue in the instant motion is whether several alleged practices of Defendant Mayflower Transit, Inc. ("Mayflower") violated the Truth-in-Leasing regulations found at 49 C.F.R. Part 376 ("Leasing Regulations") to which Mayflower is subject as an authorized carrier under federal law. Specifically, the plaintiffs ask the Court to rule that:

(1) Mayflower's deductions from owner-operator[1] compensation for the cost of its mandatory public liability/property damage insurance (hereinafter referred to as "public liability insurance") violated the Leasing Regulations;

(2) Mayflower's requirement that owner-operators obtain the public liability insurance through Mayflower violated the Leasing Regulations; and

(3) Mayflower's charge backs to owner-operator compensation for bobtail and occupational/accident insurance violated the Leasing Regulations to the extent

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[1] The term "owner-operator" as used in this Entry refers to independent owner-operator truck drivers who lease their trucks and driving services to Mayflower, either by contracting directly with Mayflower or with one of Mayflower's authorized agents.

> that they exceeded the actual premiums for such insurance.
>
> In addition, the plaintiffs seek summary judgment on the issue of whether this third practice constituted a breach of Mayflower's contracts with the owner-operators.

DISCUSSION

Deductions for Public Liability Insurance

The first issue raised in the plaintiffs' motion is whether Mayflower's alleged practice[2] of passing the cost of public liability insurance on to its owner-operators violated the Leasing Regulations. The specific regulation at issue is 49 C.F.R. § 376.12(j)(1), which provides:

> The lease shall clearly specify the legal obligation of the authorized carrier to maintain insurance coverage for the protection of the public pursuant to FMCSA regulations under 49 U.S.C. 13906. The lease shall further specify who is responsible for providing any other insurance coverage for the operation of the leased equipment, such as bobtail insurance. If the authorized carrier will make a charge back to the lessor for any of this

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[2] Because we determine as a matter of law that no violation of the applicable regulations occurred even assuming all of the facts asserted by the plaintiffs are true, we need not address Mayflower's argument that the evidence of record does not support the plaintiffs' factual assertions.

> insurance, the lease shall specify the amount which will be charged-back to the lessor.
>
> The parties vigorously disagree regarding the meaning of this regulation. The plaintiffs argue that by its plain language the regulation prohibits a carrier from making a charge back to the lessor for public liability insurance, while Mayflower argues that the plain language of the regulation authorizes such a charge back.

The process we are to follow when determining the meaning of a statute or regulation is well established:

> We begin our inquiry into the proper interpretation of the statute and regulation by determining whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case. The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole. Our inquiry must cease if the statutory language is unambiguous and the statutory scheme is coherent and consistent.

Ioffe v. Skokie Motor Sales, Inc., 414 F.3d 708, 710-11 (7th Cir.2005) (citations and internal quotation marks omitted). Looking at the plain language of the regulation at issue in this case, the first sentence recognizes that the carrier has a statutory obligation to maintain public liability insurance and requires the lease to acknowledge that obligation. The second sentence

recognizes that there are other types of relevant insurance, such as bobtail insurance, and requires that the lease specify whether the carrier or the lessor will be responsible for providing this "other insurance." The third sentence recognizes that the carrier might choose to make a charge back for "any of this insurance" that it provides, and requires that the lease specify the amount of any such charge back. As a matter of simple English, if the third sentence were intended to refer only to the "other insurance" discussed in the second sentence, it would refer to charge backs for "any of this *other* insurance." It does not. The Court finds that the phrase "any of this insurance" unambiguously refers to all of the insurance discussed in subsection (j)(1), which includes "insurance coverage for the protection of the public."

The plaintiffs argue that this reading of the regulation is impermissible because it would render the first sentence meaningless. Again, we disagree. The carrier is required by statute to maintain public liability insurance. The purpose of the first sentence is to require the lease to acknowledge that obligation, presumably to ensure that both the carrier and the lessor are aware of it and that the terms of the lease do not contradict it. Unlike public liability insurance, the carrier is not required by law to maintain any other type of insurance; hence, the second sentence requires that the lease specify which party will be responsible for providing any other insurance. The plaintiffs conflate the terms "maintain" and "bear the cost of," but the two are not synonymous. In fact, the

statute does not specify who must bear the cost[3] of either the public liability insurance or any other type of insurance. This is recognized by the third sentence of the regulation, which requires the lease to specify whether the carrier will charge back to (shift the burden of bearing the cost of) the lessor any insurance that it will maintain, either because it is statutorily required to maintain it or simply agrees to maintain it under the lease.[4]

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[3] In other words, Congress has determined that it is important that public liability insurance is maintained, and Congress further has determined that the best way to ensure that occurs is to require motor carriers to maintain it as a requirement of their registration as motor carriers. However, Congress has not prohibited motor carriers from passing the cost of public liability insurance along to its owner-operators. Therefore, the plaintiffs' argument that the statute and the regulation clearly prohibit a motor carrier from *delegating the responsibility* for public liability insurance to owner-operators is correct, but their suggestion that merely passing the cost of the insurance along to the owner-operators is the equivalent of delegating the responsibility for maintaining the insurance is incorrect.

[4] Because we find the language of the regulation to be unambiguous, we do not address the plaintiffs' arguments based upon the legislative history of the Interstate Commerce Act and the last antecedent rule of statutory construction. *See Connecticut Nat'l Bank v. Germain* 503 U.S. 249, 254, 112 S.Ct. 1146, 117 L.Ed.2d 391, (1992) (noting that the first canon of statutory construction is that "courts must presume that a legislature says in a statute what it means and means in a statute what is says there," and that "[w]hen the words of a statute are unambiguous, then, this first canon is also the last: judicial inquiry is complete").

Requirement That Public Liability Insurance Be Obtained Through Mayflower

The Leasing Regulations provide:

> Products, equipment, or services from authorized carrier. The lease shall specify that the lessor is not required to purchase or rent any products, equipment, or services from the authorized carrier as a condition of entering into the lease arrangement. The lease shall specify the terms of any agreement in which the lessor is a party to an equipment purchase or rental contract which gives the authorized carrier the right to make deductions from the lessor's compensation for purchase or rental payments.

49 C.F.R. § 376.12(i). The plaintiffs argue that Mayflower has violated this prohibition against "forced purchases." This argument is without merit. The owner-operators were not required to purchase public liability insurance from Mayflower; rather, they were subject to clearly permissible charge backs for insurance that Mayflower was statutorily required to maintain. This is a critical distinction. According to the Surface Transportation Board, the purpose of § 376.12(i) is to protect owner-operators from carriers who might seek to profit by requiring owner-operators to purchase equipment, etc., from the carrier or from companies affiliated with the carrier:

> Owner-operators express concern about deductions made by equipment sales or finance companies on behalf of affiliated carriers and

> deductions made by carriers on behalf of affiliated finance or equipment rental/purchase companies. . . . [The regulation] also addresses the concern of owner-operators about excess profits from the sale or rental of products which are tied to leasing arrangements. Lessors will be free to purchase fuel, rent trailers, obtain insurance, and so on, from whatever source they so choose.

Lease and Interchange of Vehicles, 129 M.C.C. 700, 729-30 (1978). These concerns are not implicated by the practice about which the plaintiffs complain in this case.

Chargebacks for Bobtail and Occupational/Accident Insurance

The plaintiffs argue that they are entitled to summary judgment on their claim that Mayflower violated various of the Leasing Regulations by the manner in which it charged owner-operators for bobtail insurance and occupational/accident insurance. This argument is easily disposed of. Both what the relevant lease provisions were[5] and whether Mayflower complied with those provisions are contested issues of fact, making the issue of whether Mayflower's actions violated the Leasing Regulations inappropriate for summary judgment. *See* Federal Rule of Civil Procedure 56(c) (Summary judgment is

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[5] The plaintiffs have submitted evidence regarding only a few of the contracts at issue.

appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to summary judgment as a matter of law.").

Breach of Contract

The Court by separate entry this date has decertified the class as it relates to the plaintiffs' breach of contract claims. Accordingly, the motion for summary judgment on the breach of contract claims as it relates to the class must be denied. The individual plaintiffs are free to file motions for summary judgment addressing the specific contracts that they had with Mayflower or one of its authorized agents.

CONCLUSION

For the reasons set forth above, the plaintiffs have failed to demonstrate that they are entitled to summary judgment on any of their claims in this case. Accordingly, their motion for partial summary judgment is DENIED in its entirety.

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

October 13, 2010

Before

FRANK H. EASTERBROOK, *Chief Judge*

ANN CLAIRE WILLIAMS, *Circuit Judge*

JOHN DANIEL TINDER, *Circuit Judge*

No. 08-1673	)
OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC., *et al.*, *Plaintiffs-Appellants,*	) Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division.
v.	)
MAYFLOWER TRANSIT, LLC, *Defendant-Appellee.*	) No. IP 98-458-C B/S Sarah Evans Barker, *Judge.*

Order

Plaintiffs-appellants filed a petition for rehearing and rehearing en banc on August 20, 2010, and the defendant-appellee filed a petition for rehearing on August 23, 2010. No judge in regular active service has requested a vote on the petition for rehearing en banc, and all of the judges on the panel have voted to deny rehearing. The petitions for rehearing are therefore DENIED.

1978 WL 14342 (I.C.C.), 129 M.C.C. 700

SURFACE TRANSPORTATION BOARD (S.T.B.)
LEASE AND INTERCHANGE OF VEHICLES
Decided June 13, 1978

EX PARTE NO. MC-43 (SUB-NO. 7)

DECISION

* * *

Proposed rule. – Section 1057.12(i) in the appendix.

Charge-back items. – The lease shall clearly specify all items that may be initially paid for by the authorized carrier, but ultimately deducted from the lessor's compensation at time of payment or settlement.

Discussion and conclusions. – Under this rule the parties to the lease, and not the Commission, would decide what party is to bear various costs, and any items subject to being charged back to the lessor would have to be so identified. This topic did not recieve [sic] much substantive comment, other than carriers generally stating that these items are properly the subject of individual negotiations between the parties. Requiring identification in the lease of all items subject to charge backs did not meet with major objections from either carrier or owner-operator interests. This requirement promotes truth-in-leasing and is adopted for this reason.

Additional areas continued:

(2) Rental of trailers to lessors by carrier lessees.

(3) Sale of fuel to lessors from carrier-owned pumps.

(4) Carrier equipment purchase plans or sale of equipment to lessors or other individuals.

Proposed rule. – Section 1057.12(j) in the appendix.

Products, equipment, or services from authorized carrier. – The lease shall specify that the lessor is not required to purchase or rent any products, equipment, or services from the authorized carrier. The lease shall specify the terms of any agreement in which the lessor is a party to an equipment purchase or rental contract which gives the authorized carrier the right to make deductions from the lessor's compensation for purchase or rental payments.

Discussion and conclusions. – The proposed rule is designed to insure that the lessor will not be obligated to purchase or rent products or services from the authorized carrier as a condition to entering into a lease arrangement. This section is intended to be all inclusive and affects other items as well; e.g., washing of equipment, repair services, insurance, and so on.

Carriers argue that equipment purchase plans are a great help to lessors who cannot obtain conventional financing. The BOE survey indicates that about 10 percent of permanently leased tractors are purchased under such plans. Owner-operators express concern about deductions made by equipment sales or finance companies on behalf of affiliated

carriers and deductions made by carriers on behalf of affiliated finance or equipment rental/purchase companies.

The proposed rule is consistent with the carriers' assertion that such devices are not used as conditions to leasing contracts. Further, it leaves the terms and conditions of these items to negotiations between lessor and lessee. It also addresses the concern of owner-operators about excess profits from the sale or rental of products which are tied to leasing arrangements. Lessors will be free to purchase fuel, rent trailers, obtain insurance, and so on, from whatever source they so choose.

At the present time, there is very little documentation or data on the difficulties alluded to by owner-operators about equipment rental/purchase plans. It is argued by some parties that these plans effectively place unscrupulous carriers in a position to take unfair advantage of lessors and to make excess profits from leasing arrangements.

Because of the lack of information concerning the alleged abuses connected with equipment purchase plans, the Commission, at this time, does not propose any specific rule prohibiting such activities. However, the second part of the proposed rule is aimed at full disclosure of any system of deductions between authorized carriers and their affiliated equipment purchase or rental companies.

* * *

CONTRACT HAULING AGREEMENT

THIS AGREEMENT is between Gazda Transaction System Inc., a corporation with principal offices at 9445 East River Road Coon Rapids, Minn. 55433 hereafter referred to "Company," which is engaged in the interstate transportation of property as an agent of Mayflower Transit, Inc., (hereinafter "Mayflower") and John Neidig, an individual residing at 20314 South Route 14, Harvard, Illinois 60033 with principal place of business at 9445 East River Rd., Coon Rapids, Mn. 55433, hereinafter referred to as "Contractor."

WITNESSETH:

In consideration of the mutual promises hereinafter set forth, the Company and the Contractor agree as follows:

* * *

ARTICLE 12. – LIABILITY FOR INSURANCE, LOSS, DAMAGE, AND INJURY

Liability for the following insurance, loss, damage, or injury, shall be assumed by the parties as follows:

Paragraph 1. Bodily Injury and Property Damage. The Contractor shall indemnify and hold the Company, its parents and affiliates, harmless from and against all claims, demands, losses, costs, attorneys' fees, damages, suits, judgments, penalties, interest, expenses, and liabilities of any kind or nature

whatsoever, arising directly or indirectly from Contractor's operations, including, but not limited to, any damage or injury to persons or property.

A. Company Provided Insurance. The Company shall maintain insurance coverage for the protection of the public as required by the regulations of the state agency regulating company or by the regulations of the Interstate Commerce Commission. The Company shall charge Contractor, as specified in Schedule B attached hereto, for providing bodily injury and property damage, for the use of Contractor's vehicle, insurance coverage while the equipment is operating in the service of the Company.

B. Bobtail Insurance. Contractor, at his own expense, shall purchase and maintain throughout the term of this Agreement, in accordance with Article 14, a standard bobtail automobile liability insurance policy upon his tractor and the Company's trailer, used in connection therewith, covering himself, his drivers, helpers, and other personnel when operating said equipment outside the specific dispatch of the Company. Such policy shall maintain limits of liability of at least One Million Dollars ($1,000,000.00) combined single limit for bodily injury and property damage, and uninsured motorists' coverage in limits sufficient to meet the requirements incident to the Contractor's ownership of his tractor and shall name the Company and Mayflower as additional insureds.

* * *

Schedule "A"

CONTRACTOR'S COMPENSATION SCHEDULE

CONTRACTOR'S INCOME

	TARIFF SHIPMENTS See Rule 6	BID PRICE SHIPMENTS See Rule 7	CONTRACT CARRIAGE See Rule 8
1. Hauling Compensation Rate (1) (2)	48-58% of Linehaul Transportation Charge	48-58% of Bid Price Transportation Charge	48-58% of Contract Linehaul
Less: Bodily Injury & Property Damage Liability Premium Charge	(2.5%)	(2.5%)	(2.5%)
Net Compensation (See Rule 10)	45.5-55.5%	45.5-55.5%	45.5-55.5%

* * *

5. Insurance (inclusion of Contractor under Mayflower insurance, PL/PD only. See Rule G).

   a. 2.5% of linehaul per schedule.

   b. $250,000 per claim filed for personal injury or property damage for outside – pickup or delivery – residential/other building.

* * *

MAYFLOWER TRANSIT, INC.
CONTRACT HAULING AGREEMENT

This AGREEMENT, is between MAYFLOWER TRANSIT, INC., a motor carrier engaged in the interstate transportation of property under Interstate Commerce Certificate No. MC-2934 and as a Contract Carrier under authority granted by the Interstate Commerce Commission, with principle offices at One Mayflower Drive, Fenton, Missouri, hereinafter referred to as "Company" and _____ an individual residing at _____ City of _____, State of _____ , with principal place of business at P.O. Box 26150, City of Fenton, State of Missouri, Hereinafter referred to as "Contractor."

WITNESSETH:

In consideration of the mutual promises hereinafter set forth, the Company and the Contractor agree as follows:

* * *

ARTICLE 12 – LIABILITY FOR INSURANCE, LOSS, DAMAGE, AND INJURY

Liability for the following insurance, loss, damage, or injury, shall be assumed by the parties as follows:

Paragraph 1. Bodily injury and Property Damage. The Contractor shall indemnify and hold the Company harmless from and against all claims,

demands, losses, costs, attorneys' fees, damages, suits, judgements, penalties, interest, expenses, and liabilities of any kind or nature whatsoever, arising directly or indirectly from Contractor's operations, including, but not limited to, any damage or injury to persons or property.

A. Company provided insurance. The Company shall maintain insurance coverage for the protection of the public and in such amounts as required by the regulations of the Interstate Commerce Commission. The Company shall charge Contractor, as specified in Schedule B attached hereto, for providing bodily injury and property damage vehicle insurance coverage while the equipment is operating in the service of the company. The Company shall provide the Contractor with a Certificate of Insurance and if requested by the Contractor, a copy of the insurance policy. The Insurance provided by the Company shall not include coverage for punitive damages or for acts of the Contractor or its employees, agents, helpers outside the scope of this agreement.

B. Bobtail Insurance. Contractor, at his own expense, shall purchase and maintain throughout the term of this agreement, in accordance with Article 14, a standard bobtail automobile liability insurance policy upon his tractor and the Company's trailer, used in connection therewith, covering himself, his driver, helpers, and other personnel when operating said equipment outside the specific dispatch of the Company. Such policy shall maintain limits of liability of at least One Million Dollars ($1,000,000)

combined single limit for bodily injury and property damage, and uninsured motorists' coverage in limits sufficient to meet the requirements incident to the Contractor's ownership of his tractor and shall name the Company as an additional insured.

* * *

I. Hauling Compensation (1):			Time in Service				
Regular Loaded:	From	To	0-6 mo	6 mo-1 yr	1-5 yrs	5-10 yrs	over 10 yrs
	0	100	1.08	1.08	1.09	1.09	1.09
	101	150	1.05	1.05	1.06	1.06	1.06
	151	300	0.96	0.96	0.97	0.97	0.97
	301	400	0.94	0.95	0.96	0.96	0.96
	401	500	0.90	0.91	0.92	0.93	0.94
	501	700	0.87	0.88	0.89	0.90	0.91
	701	900	0.86	0.87	0.88	0.89	0.90
	901	1200	0.85	0.86	0.87	0.88	0.89
	1201	1400	0.82	0.83	0.84	0.85	0.86
	1401	1800	0.80	0.81	0.82	0.83	0.84
	1801	& over	0.77	0.78	0.79	0.80	0.81

* * *

MAYFLOWER TRANSIT, INC.
CONTRACT HAULING AGREEMENT
SCHEDULE "B"

The following items and amounts may be charged back to the Contractor's Statement and/or Cash Deposit Account:

* * *

5. **Insurance** (inclusion of Contractor under Mayflower insurance (PL/PD Program only) See Rule H.

   a. $305.00 per month

   b. $500.00 per claim filed for personal injury or property damage for outside – pickup or delivery residence/other building.

* * *

WHITTIER TRANSFER & STORAGE

Fleet Lease Agreement

This agreement, made and entered into by Whittier Transfer & Storage Co., Inc., motor common carrier engaged in the local and intrastate transportation of household goods, electronic, trade show, and high value products, under Permit No. T 61760 issued by the Public Utilities Commission of the State of California, hereinafter referred to as the "Company" and Richard Wheatley, an individual residing at 3129 Calle Abajo, City of San Diego, CA, State of 92129, hereinafter referred to as the Independent Contractor.

WITNESSETH

In consideration of the mutual promises hereinafter set forth, the Company and the Independent Contractor agree as follows:

* * *

SCHEDULE B (MILEAGE COMPENSATION SCHEDULE)

I. MILEAGE COMPENSATION

$ 1.00 PER MILE FOR DISPATCH MILES (SUBJECT TO $300.00 MINIMUM)

NOTE: ALL MILEAGES WILL BE BASED ON THOSE MILES AS QUOTED IN THE CURRENT RAND-MCNALLY-TDM, INC MILEAGE GUIDE.

* * *

P.L.&.P.D. INSURANCE DEDUCTION:

The P.L.&.P.D. Insurance deduction taken by Mayflower Transit on all interstate shipments will be charged directly to the Independent Contractor.

* * *

UniGroup, Inc. is the parent company of United Van Lines, Inc., Mayflower Transit, Inc., and other subsidiaries which complement the worldwide operations of these two major household goods transportation companies. The largest of the supporting subsidiaries are Vanliner Group, Inc., which provides customized insurance and risk management services; United Leasing, Inc., which sells and leases trucks, trailers, and related equipment; and United Capital Services, Inc., which provides internal financing services.

UniGroup's corporate offices and world headquarters are located in suburban St. Louis, Missouri.

The addition of Mayflower Transit to the UniGroup family of companies has expanded the customer base of Vanliner Group, Inc. already serving over 80 percent of United Van Lines agents, Vanliner had added more than 100 Mayflower agent affiliates to its clientele by the end of the year. Today, Vanliner ranks as the largest insurer of moving and storage business in the United States.

Vanliner was created in 1978 to give United Van Lines agents and independent owner/operators a stable market for competitively priced insurance coverages. Originally founded as a reinsurance company, Vanliner added an insurance service subsidiary, TransProtection Service Company, in 1982 and became a full-service insurance company four years later, when its Vanliner Insurance Company subsidiary was formed.

In 1995, Vanliner expanded its penetration of the United market while consolidating into Vanliner's Fenton offices the activities of Mayflower's Gentry Insurance Company. Vanliner's net income rose substantially during the year, as did its statutory surplus.

As of January 1, 1996, Vanliner is focusing exclusively on the moving and storage business, a departure from recent years which had seen the company diversify into other risk areas. In 1995, Vanliner elected to exit the general freight market and the non-standard personal lines automobile market, decisions made on the basis of the additional business opportunities and responsibilities represented by Mayflower. In conjunction with its announced business concentration, Vanliner has entered into an agreement with the National Moving & Storage Association (NMSA) through which Vanliner will offer a property and casualty program to the agent members of the industry trade organization.

During 1995, Vanliner implemented a number of program enhancements, including an innovative approach to workers' compensation for owner/operators and umbrella insurance programs for United and Mayflower agents which resulted in significant reductions in premiums. Vanliner's plans for 1996 include aggressive marketing of all types of coverage within the UniGroup van lines' agency families, as well as to other selected moving and storage companies.